

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14719, as amended, of W. H. Associates, pursuant to 11 DCMR 3107.2, for a variance from the prohibition against allowing a subdivision which will violate the rear yard requirements (404.1), the lot occupancy requirements (403.1), the lot area requirements (401.3), and a variance from the prohibition against allowing a subdivision creating a lot (containing an apartment building) which will not have street frontage of 30 feet (Sub-section 401.7) in an R-4 District at premises 118 12th Street, N.E., (Square 988, Lot 98).

HEARING DATE: January 13, 1988
DECISION DATE: February 3, 1988

FINDINGS OF FACT:

1. The application was amended to eliminate a variance requested from the minimum lot width requirements (401.3).

2. The property is located on the west side of 12th Street, N.E., north of Walter Hoop Court, a thirty-foot wide public alley, and is known as 118 12th Street, N.E. The site is located in an R-4 District.

3. The property is rectangular in shape being 36.0 feet wide and 117.50 feet from 12th Street to a thirty-foot wide public alley at the rear of the lot. The site has a lot area of approximately 4,230 square feet.

4. The site is improved in the rear with two former warehouses built around the turn of the century which in the past year have been converted to four residential units. The site had previously been improved with two residences at the front of the lot which were subsequently razed.

5. The two rear adjoining structures occupy approximately 55 percent of the present lot and contain approximately 2,955 square feet of floor area. The structures are set back approximately 55 feet from the front property line on 12th Street, N.E. Under Section 403.2 11 DCMR, upon being converted, no lot occupancy requirement was prescribed for the site. The structures have no rear yard.

6. In Application No. 14472, W.H. Associates sought area and use variances to permit it to construct an addition onto the existing warehouses and, by that application, proposed to use a portion of the front yard of the lot for

parking purposes. The application was denied on the grounds that the applicant had failed to demonstrate the type of hardship necessary for a use variance.

7. The applicant is currently seeking to subdivide the existing record lot into two lots of record. The front and vacant lot will have a lot area of approximately 1,987.20 square feet and the rear improved lot will have 2,242.50 square feet. The front vacant lot will thereafter be improved by a single-family residence which fronts on 12th Street, N.E., and contains at least two parking spaces. The front lot can be improved in such a manner without the need for any variances.

8. Subdivision of the lot will result in the rear lot being a nonconforming lot. The Zoning Regulations permit a maximum lot occupancy of 40 percent. A variance of 1,345.68 square feet is necessary.

9. The Zoning Regulations require a lot area of 3,600 square feet for the four residential units in the former warehouses. The subdivided lot will have 2,242.80 square feet. A variance from the lot area requirement of 1,357.20 square feet is required.

10. The Zoning Regulations require that a rear yard be provided for residences in an R-4 zone and that a residence have street frontage of 30 feet. While the existing structures have no rear yard and adjoin two thirty-foot wide alleys, variances from the aforementioned requirements are necessary to subdivide the lot.

11. The subject site, located in the Capitol Hill Historic District, is surrounded by two and three-story row structures used as residences. A number of the lots in the area are divided with residences fronting on the two thirty-foot wide alleys and other residences fronting on 12th Street, East Capitol Street, Constitution Avenue and 11th Street.

12. The applicant testified regarding the development of the rear portion of the lot and the difficulties it has had with using and maintaining the front vacant portion of the lot. According to the applicant, since it cannot use the front portion of the lot it has deteriorated. The applicant is willing to restrict development of the front of the lot to a single family residence and provide two parking spaces. The applicant also noted that its proposed use of the lot is consistent with similar uses in the area. The Board concurs.

13. The applicant's architect testified that the site is unique because of its extremely large size, the location of the existing structures on the lot and the existence of

two thirty-foot alleys adjacent to the lot. According to the architect, subdivision of the lot and the construction of a residence on the front of the lot would be consistent with land uses in the area and a substantial benefit to the neighborhood. Currently the vacant portion of the lot cannot be adequately maintained given its size and proximity to the street and the fact that the rear residences do not have any entrance from the lot. The vacant lot is therefore presumed to be space ripe for dumping by strangers to the area and even nearby property owners.

14. The architect further testified that it is unusual to find a lot such as this where the front structure has been demolished leaving a large vacant lot and the rear structures retained. If the property was not located in the Capitol Hill Historic District the applicant could have demolished the rear warehouses and subdivided the lot lengthwise, producing two conforming lots. However, their location in the Historic District prevents such action. The Board concurs with the testimony of the architect.

15. The Zoning Regulations preclude the applicant from providing parking on the open portion of the lot because it lies in the area between the building line and lot line abutting a street and the area constitutes the lot's front yard.

16. The Office of Planning (OP), by memorandum dated January 7, 1988, recommended that the application be denied. The OP was of the opinion that the proposed subdivision would increase the nonconformities of the existing structures and may impact the air and light for the developed portion of the site and the adjoining townhouses to the north adversely. The Office of Planning noted that the site is twice the width and area of adjoining lots that other rear structures on developed lots in the area have been converted to residential uses and that the arrangement of development on the site is the reverse of other sites in the area. The Board finds that the air and light of adjoining townhouses would not be adversely affected by development on the site since, inter alia, windows of the existing structure to the north are on the rear of the structure over the rear yard nonconformity will not be exacerbated by the subdivision since it already exists, and that the increase in density is minimal. The Board also finds that to the extent the subdivision exceeds lot occupancy and lot area requirements they result from the inability to demolish the rear structure.

17. Advisory Neighborhood Commission (ANC) 6A, by resolution dated January 8, 1988 and by representative at the public hearing, recommended that the application be denied because of concerns about increased density from the construction of a conforming residence on the front portion

of the lot. ANC 6A stated such construction would exacerbate the current parking problem. The ANC noted, however, that the neighborhood was interested in working with the applicant to develop the lot by constructing additional condominiums on the lot without a subdivision, and the ANC representative testified that she personally would not oppose the application if development of the front lot were restricted to a single family residence and parking were provided. The Board finds that the applicant cannot develop the lot without a subdivision and that the concerns of the ANC and the neighborhood have been addressed by the applicant's testimony that it would place a covenant on the lot restricting its use to a single-family residence and the fact that the front lot could accommodate at least two parking spaces. Since the rear of the lot would not be further developed no increase in density or exacerbation of parking would result from the nonconforming aspects of the rear structure.

18. The Capitol Hill Restoration Society (CHRS), by letter dated January 8, 1988, and through a representative at the hearing, opposed the application based on the following:

- a. The property is built to capacity allowed under the R-4 regulations and applicant does not show that any undue hardship has resulted.
- b. Subdivision would create a precedent for other owners of alley structures to seek similar variances.
- c. The neighbors are almost uniformly strongly opposed to subdivision because they are concerned about increased density of use in an area already heavily impacted by density.
- d. The vacant portion of the lot need not "deteriorate" as applicant states, but can be improved without a building by proper landscaping. A special exception use would allow a portion of the vacant area to be used for parking by the residents of the apartments.
- e. Because the existing buildings are not historic, demolition is another alternative, allowing the lot to be subdivided lengthwise to permit erection of two rowhouses, without increasing density.

The Board finds, however, that (1) since the applicant is seeking area variances it need not show undue hardship; (2) because the site is unique a subdivision would not create a precedent; (3) increased density is limited by development of only a single-family residence; (4) the vacant portion of the lot cannot be used for parking or adequately maintained; and (5) the existing buildings are historic and, therefore, cannot be demolished.

19. Two nearby property owners appeared at the public hearing in support of the application. Their support was based on the ground that residential development of the front portion of the lot would enhance the neighborhood, increase security and eliminate a vacant lot which has been abused through the dumping of trash by strangers. One resident, who lives directly across the alley from the site, testified that there would be no increase in density or exacerbation of parking problems by the development of the site and that the historic character of the neighborhood was hurt by allowing the lot to be undeveloped.

20. A couple of neighbors of the site submitted letters to the record in opposition to the application on grounds expressed by the ANC and CHRS above.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking variance relief. The granting of such relief requires a showing of a practical difficulty upon the owner arising out of some exceptional or extraordinary condition inherent in the property itself. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose or integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concludes that the applicant has met this burden of proof. The site is large and was developed prior to the adoption of the current Zoning Regulations. The subject site, both in size and the location of improvements on the lot, is unique. The modification or demolition of structures on the site is limited by virtue of its location in the historic district and use of the vacant portion of the lot is restricted by the location of the present improvements and the previous existence of residences on the lot.

The Board further concludes that the requested relief can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations and will not tend to adversely affect the use of neighboring property. Accordingly, it is hereby ORDERED that the application is GRANTED SUBJECT to the CONDITION that the front of the lot be improved with only a single-family residence.

VOTE: 3-1 (Charles R. Norris, Carrie L. Thornhill and Paula L. Jewell to grant; William F. McIntosh opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

APR 21 1988

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14719


As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated APR 21 1982, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: APR 21 1982